

G:\PRO-SE\SJ.JW\CR.04\Sibley0348_dismiss4m.wpd

1 complaint, when liberally construed, stated a claim against Meyer.¹ In that same
2 order, the Court directed the clerk to prepare the summons for service of the second
3 amended complaint upon Meyer, and the United States Marshal to effectuate such
4 service. The Clerk prepared the summons for service of Meyer at SVSP, where
5 plaintiff indicated he was located. The Marshal returned the summons unexecuted
6 because Meyer was not located at SVSP.

7 In cases wherein the plaintiff proceeds in forma pauperis, the “officers of the
8 court shall issue and serve all process.” 28 U.S.C. § 1915(d). The court must
9 appoint the Marshal to effect service, see Fed. R. Civ. P. 4(c)(2), and the Marshal,
10 upon order of the court, must serve the summons and the complaint, see Walker v.
11 Sumner, 14 F.3d 1415, 1422 (9th Cir. 1994). Although a plaintiff who is
12 incarcerated and proceeding in forma pauperis may rely on service by the Marshal,
13 such plaintiff “may not remain silent and do nothing to effectuate such service”;
14 rather, “[a]t a minimum, a plaintiff should request service upon the appropriate
15 defendant and attempt to remedy any apparent defects of which [he] has
16 knowledge.” Rochon v. Dawson, 828 F.2d 1107, 1110 (5th Cir. 1987).

17 Here, plaintiff’s second amended complaint has been pending for over 120
18 days, and thus, absent a showing of “good cause,” is subject to dismissal without
19 prejudice. See Fed. R. Civ. P. 4(m). On September 6, 2007, the Court ordered
20 plaintiff to either “effect service on defendant Meyer, or provide the Court with an
21 accurate current location such that the Marshal is able to effect service.” The Court
22 warned plaintiff that his failure to do so would result in the dismissal of plaintiff’s
23 claims against Meyer without prejudice, pursuant to Rule 4(m) of the Federal Rules
24 of Civil Procedure. Plaintiff has not responded to the Court’s September 6, 2007

25
26 ¹Claims against Wysinger were dismissed for failure to state a cognizable
27 claim for relief.

1 Order. Plaintiff has not provided sufficient information to allow the Marshal to
2 locate and serve Meyer. Consequently, the instant action is hereby DISMISSED
3 without prejudice, pursuant to Rule 4(m) of the Federal Rules of Civil Procedure.

4 The Clerk shall close the file and terminate any pending motions.

5
6 DATED: October 30, 2007


7 JAMES WARE
United States District Judge